

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0308 CG
Charity Gaming

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ISSUES

I. Charity Gaming – Management and Conduct of Events

Authority: IC 4-32-9-15

The Blues Society of Indiana d/b/a Northwest Blues Bingo (hereinafter referred to as Petitioner) protests the Indiana Department of State Revenue's imposition of a civil penalty for contracting in violation of IC 4-32-9-15.

II. Charity Gaming – Operator Membership Requirement

Authority: IC 4-32-9-28

The Petitioner protests the Department's imposition of a civil penalty for violating IC 4-32-9-28.

III. Charity Gaming – Worker Membership Requirement

Authority: 4-32-9-29

The Petitioner protests the Department's imposition of a civil penalty for violating IC 4-32-9-29.

IV. Charity Gaming – Remuneration of Operators and Workers

Authority: IC 4-32-9-25; 45 IAC 18-3-2

The Petitioner protests the Department's imposition of a civil penalty for allowing workers to accept tips from patrons violating IC 4-32-9-25.

V. Charity Gaming – Posting of Signage

Authority: 45 IAC 18-3-2

The Petitioner protests the Department's imposition of a civil penalty for failure to post a "no tipping" sign in violation of 45 IAC 18-3-2.

VI. Charity Gaming – Participation of Operators and Workers in Events

Authority: IC 4-32-9-27; 45 IAC 18-3-2

The Petitioner protests the Department's imposition of a civil penalty for allowing workers to participate in charity gaming in violation of IC 4-32-9-27.

VII. Charity Gaming – Prize Limits

Authority: IC 4-32-9-33

The Petitioner protests the Department's imposition of a civil penalty for exceeding the prize pay outs as set forth in IC 4-32-9-33.

VIII. Charity Gaming – Grounds for Penalties

Authority: IC 4-32-12-1(4) & (5); IC 4-32-9-15

The Petitioner protests the revocation of its charity gaming license and the subsequent suspension from conducting charity gaming for five (5) years.

STATEMENT OF FACTS

The Department's Criminal Investigation Division (CID) conducted an investigation of the Petitioner's organization. As a result of the investigation, the Department issued a letter denying the issuance of Petitioner's charity gaming license. The letter was hand delivered to Petitioner's business on July 17, 2000, by one of the Department's investigators. The Petitioner protested the Department's denial, of its license to conduct charity gaming, in a letter dated July 17, 2000. An Administrative hearing in the above referenced matter was held July 21, 2000. On July 28, 2000, the Department received the transcript of the hearing.

I. Charity Gaming – Management and Conduct of Events

DISCUSSION

According to the Department's investigation the Petitioner entered into an agreement in 1994 with Mr. & Mrs. "S" (hereinafter referred to as "The Operators") who were to

operate the Petitioner's charity gaming operations. The Operators agreed to finance the beginning of the gaming operation in exchange for sixty percent (60%) of the gaming profits. The Operators as part of the agreement located, rented, and paid for the repairs of Petitioner's bingo hall. The Operators also rented another site to operate bingo for the Petitioner. The Operators hired an architect to recommend repairs to the current bingo hall and paid a total of thirty-three thousand dollars (\$33,000) for the repairs. All of these decisions were made by the Operators, without consulting any member or officer of the Petitioner's organization.

The Operators were the actual lessees of the current location which housed the Petitioner's charity gaming. The Petitioner became the sub-lessee. The original lease between the owner of the property and the Operators was for (\$2,619) plus incidentals. The sub-lease was for considerably less. However, if the Petitioner used the current location for any activity other than charity gaming, the Petitioner was charged extra. The rent paid by the Petitioner to the Operators was greater than the amounts due and owing on the original lease thereby creating a profit for the Operators while they were operating the Petitioner's charity gaming operations. It also appears that the Operators paid the entire amount of rent due and owing on the original lease and the sub-lease to the owner from the Petitioner's bank account.

Indiana Code section 4-32-9-15 states, "A qualified organization may not contract or otherwise enter into an agreement with an individual, a corporation, a partnership, a limited liability company, or other association to conduct an allowable event for the benefit of the organization."

At hearing the Petitioner's representative stated, "When all this investigation was done, ... were we not in fact, told that we weren't considered to be a partner in a scam here, and that the Department of Revenue...had no interest in pursuing the Blues Society... in 1998? (Record at 29).

The Department's witness in order to clarify the situation stated:

... I told you as long as you were straightening out the bingo, you had no part in what was going on before, that we could certainly take into consideration that you guys were trying to clean up the bingo hall. And that definitely was taken into consideration.

However, as I went on with my investigation, that was not the case for the entire thing. You had violated several rules of your own, and that is when we decided that the Blues was also responsible, not only the [Operators].(Record at 29 & 30).

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

It is clear that the Petitioner was cooperating with the Department's investigation but subsequent investigations found continued violations by the Petitioner (additional violations to be discussed in the findings below). The Petitioner did not offer any evidence either written or oral to contradict the Department's findings that the Petitioner entered into an agreement with the Operators to conduct their charity gaming events.

FINDING

The Petitioner's protest is denied.

II. Charity Gaming – Operator Membership Requirement

DISCUSSION

The Operators acted as operators even though they had not been members for at least one (1) year as is required by IC 4-32-9-28. Indiana Code section 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event."

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner did not offer any evidence either written or oral to contradict the Department's findings that the Petitioner's operators had not been members of the organization for at least one (1) year in violation of IC 4-32-9-28.

FINDING

The Petitioner's protest is denied.

III. Charity Gaming – Worker Membership Requirement

DISCUSSION

The Petitioner violated IC 4-32-9-29 by allowing workers who were not members for at least thirty (30) days to work at events. Indiana Code section 4-32-9-29 states, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner did not offer any evidence either written or oral to contradict the Department's findings that the Petitioner allowed workers who were not members for at least thirty (30) days to work at events in violation of IC 4-32-9-29.

FINDING

The Petitioner's protest is denied.

IV. Charity Gaming – Remuneration of Operators and Workers

DISCUSSION

On three (3) separate occasions, the Department's investigator observed workers taking tips from players in violation of IC 4-32-9-25; 45 IAC 18-3-2(i). Indiana Code section 4-32-9-25 states:

Except as provided in subsection (b), an operator or a worker may not receive remuneration for:

- (1) preparing for;
 - (2) conducting;
 - (3) assisting in conducting;
 - (4) cleaning up after; or
 - (5) taking any other action in connection with;
- an allowable event.

(b) A qualified organization that conducts an allowable event may:

- (1) provide meals for the operators and workers during the allowable event; and
 - (2) provide recognition dinners and social events for the operators and workers;
- if the value of the meals and social events does not constitute a significant inducement to participate in the conduct of the allowable event.

45 IAC 18-3-2(i) provides in pertinent part, "...Also, an organization cannot pay the operator or workers of an allowable event, including tips from the players."

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner did not offer any evidence either written or oral to contradict the Department's findings that workers were taking tips from players in violation of IC 4-32-9-25 and 45 IAC 18-3-2(i).

FINDING

The Petitioner's protest is denied.

V. Charity Gaming – Posting of Signage

DISCUSSION

The Department's investigator frequented the Petitioner's hall on three occasions (November 27, 1997; January 21, 1998; and January 14, 2000). The Department's investigator observed, during the course of her investigation, the lack of a sign indicating that tipping is not allowed in violation of 45 IAC 18-3-2(i), which provides in pertinent part, "...A legible sign of adequate dimension must be prominently posted during an event stating that the operator and workers are not allowed to accept tips."

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner stated during the hearing, "...May the 11th when we put the (" ... ") out, we closed down to clean the place up, get rid of their stuff and repaint. We found... that there was a huge calendar hung over the tipping sign..."(Record at 47). The Petitioner goes on to state that, "...The day we opened up, the tipping sign has remained at the deal desk..." (Record at 47). It is clear from the record that once the Petitioner's representatives began to operate their own facility the signs were posted, but prior to that they were covered up intentionally.

FINDING

The Petitioner's protest is denied.

VI. Charity Gaming – Participation of Operators and Workers in Events

DISCUSSION

The Department's investigator observed workers and operators purchasing pull-tabs, opening them, and collecting the prize money. The workers and operators continued to play until all the pull-tab seals were completely sold out. Indiana Code section 4-32-9-27 states, "An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event that the operator or worker is conducting."

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner on cross-examination asked the Department's witness, "...You stated the first two times you were there [November 27, 1997 and January 21, 1998], that the gambling continued well into the night past the bingo time?" (Record at 41). The witness responded, "Yes" (Record at 41). The witness was then asked, "Can you tell us if that was the case when you were there on January 14, 2000?" (Record at 41). The witness's response was, "No..." (Record at 41).

The Petitioner did not offer any other evidence either written or oral to contradict the Department's findings that workers and operators were purchasing pull-tabs, opening them, collecting the prize money, and playing until all the pull-tab seals were completely sold out in violation of IC 4-32-9-27. While it is clear from the testimony of the Department's witness that the Petitioner discontinued selling pull tabs at the proper time on the night of January 14, 2000. That does not negate the fact that workers and operators were participating in the games and also that the games were played beyond their ending time on the two other occasions where the Department's investigator was present.

FINDING

The Petitioner's protest is denied.

VII. Charity Gaming – Prize Limits

DISCUSSION

The last time the Department's investigator observed the Petitioner, the pull-tab prize pay out on four (4) different games totaled five hundred dollars (\$500) or greater exceeding the three hundred dollar (\$300) limitation as set forth in IC 4-32-9-33. Indiana Code section 4-32-9-33(b) states, "A single prize awarded for one (1) winning ticket in a pull tab, punchboard, or tip board game may not exceed three hundred dollars (\$300)."

The Petitioner's Exhibits 1, 2, 3, 4, & 5 were a representative sample of the types of games offered by the Petitioner. The Petitioner also explained how the games were played and administered. However, the evidence does not correspond with the games that were made part of the Department's investigation.

Pursuant to IC 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

The Petitioner had the opportunity through discovery to determine which games were under scrutiny by the Department, but failed to avail themselves of their right to view the Department's records in order to adequately prepare a response to the Department's actions.

FINDING

The Petitioner's protest is denied.

VIII. Charity Gaming – Grounds for Penalties

DISCUSSION

In addition to the forgoing penalties, the Department revoked and suspended Petitioner's license for five (5) years for what is termed "egregious conduct" in violation of IC 4-32-12-1(4) & (5) for participating in contracting and undertaking to deceive the Department by representing that the Operators and workers were members when they were not. Indiana Code section 4-32-12-1 states, "... (4) Commission of a fraud, deceit, or misrepresentation. (5) Conduct prejudicial to public confidence in the department."

The revocation of Petitioner's license and a five (5) year suspension is well within the Department's authority pursuant to IC 4-32-12-3.

FINDING

The Petitioner's protest is denied.

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